

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 2:23-cv-00103-JAD-NJK

Aaron Russel Drain,

Plaintiff

v.

Kevin Menon, et al.,

Defendants

**Order Adopting Report & Recommendation
and Dismissing Action**

[ECF No. 12]

When Plaintiff Aaron Russel Drain’s mail from this court started getting returned to sender, the court ordered him to file a notice of change of address by December 15, 2023, or risk having his case dismissed.¹ Plaintiff did not update his address, so on December 21, 2023, the magistrate judge issued a report and recommendation to dismiss this case without prejudice.² The deadline for the plaintiff to object to that recommendation was January 4, 2024, and the plaintiff neither filed objections nor moved to extend the deadline to do so. “[N]o review is required of a magistrate judge’s report and recommendation unless objections are filed.”³ Having reviewed the R&R, I find good cause to adopt it, and I do.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules.⁵ In determining whether to dismiss an action on this ground, the court must consider: (1)

¹ ECF No. 10.

² ECF No. 12.

³ *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁵ *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*

1 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
2 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
3 cases on their merits; and (5) the availability of less drastic alternatives.⁶

4 The first two factors, the public's interest in expeditiously resolving this litigation and the
5 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
8 ordered by the court or prosecuting an action.⁷ The fourth factor—the public policy favoring
9 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the court to consider whether less drastic alternatives can be used
11 to correct the party's failure that brought about the court's need to consider dismissal.⁸ Courts
12 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
13 explore possible and meaningful alternatives.”⁹ Because this action cannot realistically proceed
14 without the ability for the court and the defendants to send plaintiff case-related documents,
15 filings, and orders, the only alternative is to enter a second order setting another deadline. But
16 without an updated address, the likelihood that the second order would even reach the plaintiff is
17 low, so issuing a second order will only delay the inevitable and further squander the court's
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20 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
21 order).

22 ⁶ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
23 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

24 ⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

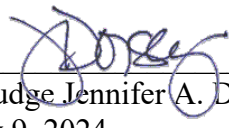
25 ⁸ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
26 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
27 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
28 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of last drastic
alternatives prior to disobedience of the court's order as satisfying this element[.]” i.e., like the
“initial granting of leave to amend coupled with the warning of dismissal for failure to
comply[.]” have been “eroded” by *Yourish*).

⁹ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 finite resources. Setting another deadline is not a meaningful alternative given these
2 circumstances. So the fifth factor favors dismissal.

3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
4 dismissal. IT IS THEREFORE ORDERED that the magistrate judge's report and
5 recommendation **[ECF No. 12]** is **ADOPTED** in full;

6 IT IS FURTHER ORDERED THAT **this case is dismissed**. The Clerk of Court is
7 directed to ENTER JUDGMENT ACCORDINGLY and CLOSE THIS CASE.

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10 U.S. District Judge Jennifer A. Dorsey
Dated: January 9, 2024
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